

But, in the case of *Quynn vs. the State, Harr. & Johns.*, 36, a judgment, by confession, was taken by writ of error to the Court of Appeals, and the record was not only retained, but the judgment of the general court reversed; and, it is believed, that the practice has been very general and of long standing, to take before the appellate court judgments and decrees, by confession, and by default; and, that the only question ever made upon the subject of the right of appeal, has had reference, not to the proceedings which led to the decision appealed from, but to the character of the decision itself—that is, whether it settled the questions of right between the parties. If it did, the appeal has been entertained, no matter whether the decision was adverse, or by consent or default.

The right of appeal, for the mere purpose of delay, seems to have been recognised by the legislature, by the act of 1832, chapter 230; for, in such case, the court is directed to award damages, over and above the interest allowed by law upon the amount of the judgment. This law, though it imposes a penalty for taking a case before the Court of Appeals, merely for delay, yet appears to recognise the right, subject to the penalty, if, upon an examination of the record, the Court of Appeals should think it proper to impose it—that is, if the court should think delay alone was the object of the appeal.

But, whether an appeal will lie or not, in any given case, is for the appellate court, and not for this court, to decide; it being a question relating to the jurisdiction of the superior tribunal, and, therefore, for it alone to determine. *Thompson vs. McKim*, 6 *Harr. & Johns.*, 302; *Oliver vs. Palmer and Hamilton*, 11 *Gill & Johns.*, 137.

In view of these decisions of the Court of Appeals, it would seem impossible to contend, that this court would be justifiable in affirming a sale, made under the authority of its decree, from which an appeal had been taken, and for the prosecution of which appeal, an approved bond had been given. The sale, therefore, must be set aside.